

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>ELLEN LIBBEY ANDREW,</p> <p>v.</p> <p>Respondent:</p> <p>TELLER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 61100</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on March 28, 2013, Diane M. DeVries and MaryKay Kelley presiding. Petitioner appeared pro se. Respondent was represented by Matthew A. Niznik, Esq. Petitioner is protesting the 2012 classification and actual value of the subject property.

1. Classification

The Board grants Respondent’s motion for summary judgment pertaining to the classification of the subject. Petitioner requested agricultural classification for 2012. Per Section 39-1-102(1.6)(a)(I), C.R.S., agricultural classification requires proof that a parcel of land was used as a farm or a ranch in the assessment year at issue (2012) and the previous two years (2010 and 2011). Previously, Petitioner requested agricultural classification for tax years 2010 and 2011. The BAA and the Colorado Court of Appeals upheld residential classification for tax year 2010, and the BAA granted summary judgment for tax year 2011.

The Board determined that Petitioner is collaterally estopped from re-litigating the issue of classification of the subject for the 2010 and 2011 tax years. See *Von Hagen v. Board of Equalization of San Miguel County*, 948 P.2d 92 (Colo. App. 1997). Because Petitioner is collaterally estopped from re-litigating the 2010 and 2011 classification of the subject which was previously determined to be residential, there can be no showing made that the property was used as a farm or a ranch during the relevant statutory period as mandated by Section 39-1-102(1.6)(a)(I), C.R.S. Therefore, Petitioner’s appeal as to the classification of the subject is denied.

2. Valuation

Subject property is described as follows:

**300 Elk Court Divide, Colorado
Teller County Schedule No. R0014294**

The subject property is a 3,450 square foot residence built in 2009 on 35.01 acres. It is located in Elk Valley Estates, a covenant-controlled residential community with 35 sites. A conservation easement is in place, having been created for the protection of an elk migration corridor.

Respondent assigned a value of \$611,910 for tax year 2012. Petitioner is requesting a value of \$560,000.

Ms. Andrew testified that some interior features remain unfinished; entry flooring, door knobs, closet doors and casings, baseboards, and built-in cabinetry. She argued that Respondent's appraised value assumed 100% completion, but it should have included adjustments for incomplete items.

Ms. Andrew presented two comparable sales, both included in Respondent's appraisal as Sales 1 and 2; 6100 Elk Valley Road (sale price of \$575,000) and 4536 West Highway 24 (sale price of \$675,000). Because both had larger decks and more bedrooms and bathrooms, she concluded to a value for the subject property of \$560,000.

Ms. Andrew presented an equalization argument which is given little consideration by the Board. Equalization arguments stating that a subject property's value should conform to the values of similar properties, without regard to any quality or value differences, are not permissible. *Arapahoe County Bd. of Equalization v. Podoll*, 935 P.2d 14, 17 (Colo. 1997).

Ms. Andrew testified that Elk Valley Estate's conservation easement negatively impacted marketability and value. She presented land sales in Elk Valley Estates and elsewhere, arguing that comparison of subdivision sale prices concluded to lower values for the subject subdivision; she attributed the difference in values to the conservation easement. She estimated the impact of the conservation easement to be between \$50,000 and \$100,000.

Respondent assigned a value of \$611,910 for the subject property based on the market approach. Respondent's witness, Betty M. Clark-Wine, Assessor, presented three comparable sales ranging in sale price from \$575,000 to \$745,000. After adjustments were made, the sales ranged from \$585,589 to \$653,546. Putting most weight on Sale 1 due to its location within Elk Valley Estates, Ms. Clark-Wine concluded to a value at the lower end of the adjusted range (\$601,105). Agreeing with Petitioner that the completed deck should have been included in value, she added \$10,800, thereby supporting the assigned value of \$611,910.

Ms. Clark-Wine described the subdivision's amenities. It is gated and secluded with rolling terrain, valley and panoramic views including Pike's Peak, rock formations, and freely-roaming herds of elk. The conservation easement protects the elk herds and prohibits further subdivision, adding significantly to marketability and value. The witness based her opinion on extensive experience in the area and an ongoing comparison of subdivision values.

Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly valued for tax year 2012.

Respondent's witness presented a market approach in which all three comparable sales were adjusted for differences. The Board agrees that Sale 1, located within Elk Valley Estates, provides the best indicator of value. Petitioner concluded to a value based on two sales, but the analysis did not conform to accepted appraisal methodology and is given little weight.

The Board is persuaded that the conservation easement is a positive influence on marketability and value. Respondent's testimony was more convincing. Petitioner, while comparing land sales, did not address a variety of other factors inherent in price, such as terrain, view, solar exposure, building envelope, and the value range of the improvements, among others.

The Board does not consider the unfinished items within the home to adversely impact marketability or value. They are insignificant within the scope of the custom construction.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

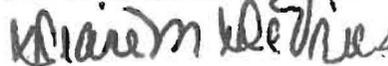
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

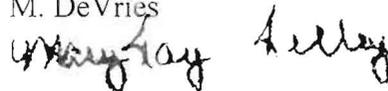
Section 39-8-108(2), C.R.S.

DATED and MAILED this 10th day of April, 2013.

BOARD OF ASSESSMENT APPEALS

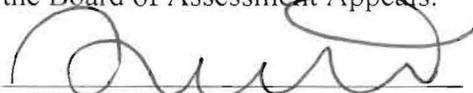


Diane M. DeVries



MaryKay Kelley

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.



Milla Crichton

